

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON

MICHAEL KOKOSKI,

Petitioner,

v.

Case No. 2:12-cv-01649

**STEPHEN C. TUCKER, Administrator,
South Central Regional Jail,**

Respondent.

PROPOSED FINDINGS AND RECOMMENDATION

Pending before the court is the petitioner's Petition for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241. (ECF No. 1.) This matter is assigned to the Honorable Joseph R. Goodwin, Chief United States District Judge, and it is referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

PROCEDURAL HISTORY AND THE PETITIONER'S PRESENT CLAIM

On September 19, 1994, the petitioner was sentenced in this United States District Court to serve 144 months in prison, followed by a six (6) year term of supervised release, after having been convicted of employing a person under eighteen years old to distribute LSD, in violation of 21 U.S.C. §§ 841(a)(1) and 861(a)(1). *See United States v. Kokoski*, Case No. 5:92-cr-00090 (S.D. W. Va.). On May 10, 2000, the petitioner was sentenced to an additional 37 months of imprisonment, followed by a three-year term of supervised release, after having been convicted on a charge of escape from custody, in violation of 18 U.S.C. § 751(a). *See United States v. Kokoski*, Case No. 5:96-cr-00064 (S.D. W. Va.). The petitioner has an extensive history of filing post-

conviction petitions and motions in this court, which are not relevant to the instant proceeding, and will not be recited herein.

On June 8, 2008, the petitioner finished serving his terms of imprisonment, and was released from custody to begin serving his two separate terms of supervised release, which were to run concurrently. The petitioner's supervision was transferred to the Southern District of Ohio, where the petitioner was residing with his family.

According to the instant petition, on March 9, 2010, the petitioner's supervised release was revoked due to three positive drug screens and an arrest for driving under the influence. *See United States v. Kokoski*, Case No. 1:09-cr-00145 (S.D. Ohio). (ECF No. 1 at 2.) The revocation of the petitioner's supervised release resulted in the petitioner being sentenced to a 60-day jail term, to be followed by two years of supervised release. (*Id.*) On August 2, 2010, after having been re-released to supervision, the petitioner's supervised release was again revoked for failure to participate in drug abuse treatment and he was sentenced to serve 34 months in prison, without any further supervision thereafter. (*Id.*)

On April 25, 2012, the petitioner was released into a Residential Re-entry Center ("RRC") located in St. Albans, West Virginia, to serve the remainder of his sentence. (*Id.*) However, according to the instant petition, on May 13, 2012, the petitioner suffered a slip and fall at the RRC that required hospitalization and resulted in the petitioner's loss of consciousness and the need for staples to close a head wound. The petition further states that the petitioner was subsequently taken into the custody of the United States Marshals Service, and transported to the South Central Regional Jail, without explanation or any statement of reasons as to why he was removed from the RRC. (*Id.* at 2-4.)

The instant petition asserts that the 34-month term of imprisonment imposed by the Ohio court exceeded the statutory maximum under 18 U.S.C. § 3583(e)(3), and that he has improperly served more than two years of imprisonment on the revocation. He seeks immediate release from custody. (*Id.* at 4-5.)

The undersigned has determined that the petitioner fully discharged his sentence and was released from custody without further requirement of supervision by the court on September 26, 2012. Accordingly, he is not “in custody” as defined by section 2241(c), and his claim for habeas corpus relief is now moot.

Accordingly, the undersigned proposes that the presiding District Judge **FIND** that the petitioner is no longer in custody as defined by 28 U.S.C. § 2241(c), and there is no basis to grant the petitioner habeas corpus relief. Therefore, it is respectfully **RECOMMENDED** that the presiding District Judge **DENY**, as moot, the petitioner’s Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (ECF No. 1), and **DISMISS** this civil action from the docket of the court.


The petitioner is notified that this "Proposed Findings and Recommendation" is hereby **FILED**, and a copy will be submitted to the Honorable Joseph R. Goodwin, Chief United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), Rule 8(b) of the Rules Governing Proceedings in the United States District Courts Under Section 2255 of Title 28, United States Code, and Rule 45(c) of the Federal Rules of Criminal Procedure, the petitioner shall have fourteen days (filing of objections) and then three days (mailing/service), from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and

Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. *Snyder v. Ridenour*, 889 F.2d 1363 (4th Cir. 1989); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). A copy of such objections shall be served on Chief Judge Goodwin.

The Clerk is directed to file this Proposed Findings and Recommendation, to mail a copy of the same to the petitioner at his last known address prior to his most recent incarceration, which is 633 Lebanon Road, Clarksville, Ohio 45113.

October 11, 2012


Mary E. Stanley
United States Magistrate Judge